

NO. 48948-1-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

A.B.,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLALLAM COUNTY

The Honorable Christopher Melly, Judge

BRIEF OF APPELLANT

Peter B. Tiller, WSBA No. 20835
Of Attorneys for Appellant

The Tiller Law Firm
Corner of Rock and Pine
P. O. Box 58
Centralia, WA 98531
(360) 736-9301

TABLE OF CONTENTS

	<u>Page</u>
A. ASSIGNMENTS OF ERROR	1
B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR	1
C. STATEMENT OF THE CASE.....	1
1. <u>Original juvenile disposition order, Cause No. 15-8-00012-2</u>	2
2. <u>Probation Violation filed October 8, 2015</u>	3
3. <u>Current adjudication, Cause No. 15-8-00112-9</u>	4
D. <u>ARGUMENT</u>	6
1. <u>THE STATE WAS PROHIBITED UNDER RCW 13.40.070(3) FROM CHARGING A.B. WITH POSSESSION OF MARIJUANA AFTER MOVING TO MODIFY A.B.'S COMMUNITY SUPERVISION FOLLOWING SUSPENSION FROM SCHOOL BASED ON THE SAME CONDUCT</u>	7
a. The State is prohibited from charging A.B. with possession of marijuana because it relied on the same underlying conduct in its motion to modify his community supervision.....	9
b. Prohibiting the State from charging A.B. with possession of marijuana follows the legislative intent of RCW 13.40.070.....	14
E. CONCLUSION.....	19

TABLE OF AUTHORITIES

<u>WASHINGTON CASES</u>	<u>Page</u>
<i>Geschwind v. Flanagan</i> , 121 Wn.2d 833, 854 P.2d 1061 (1993).....	8, 13
<i>State v. Howell</i> , 119 Wn.2d 513, 833 P.2d 1385 (1992).....	8
<i>State v. J.H.</i> , 96 Wn.App. 167, 978 P.2d 1121 (1999).....	16
<i>State v. L.W.</i> , 101 Wn.App. 595, 6 P.3d 596 (2000).....	14, 15
<i>State v. Murrin</i> , 85 Wn.App. 754, 934 P.2d 728 (1997).....	8, 9, 10, 12
<i>Purse Seine Vessel Owners Ass'n v. Moos</i> , 88 Wn.2d 799, 567 P.2d 205 (1977).....	14
<i>State v. Rice</i> , 98 Wn.2d 384, 400, 655 P.2d 1145 (1982).....	15
<i>State v. Schaaf</i> , 109 Wash.2d 1, 743 P.2d 240 (1987).....	15, 16
<i>State v. Tran</i> , 117 Wn. App. 126, 69 P.3d 884 (2003).....	11, 12, 13, 14
<i>State v. Villanueva-Gonzales</i> , 175 Wn.App. 1, 304 P.3d 906 (2013).....	6
<i>State v. Wilson</i> , 125 Wn.2d 212, 883 P.2d 320 (1994).....	8
<i>Welch v. Southland Corp.</i> , 134 Wn.2d 629, 952 P.2d 162 (1998).....	8
 <u>UNITED STATES CASES</u>	 <u>Page</u>
<i>United States v. Soto-Olivas</i> , 44 F.3d 788, 789 (9th Cir.), cert. denied, 515 U.S. 1127, 115 S.Ct. 2289, 132 L.Ed.2d 290 (1995).....	18
 <u>REVISED CODE OF WASHINGTON</u>	 <u>Page</u>
RCW 13.40.010(2).....	15, 17
RCW 13.40.070(3).....	1, 2, 5, 6, 7, 8, 9, 13, 16
RCW 46.20.005.....	12
RCW 69.40.204 (c)(22).....	5
RCW 69.50.4013(2).....	5
RCW 69.50.4014.....	5

A. ASSIGNMENTS OF ERROR

1. The juvenile court erroneously denied appellant A.B.'s motion to dismiss a charge of possession of marijuana under RCW 13.40.070(3) where the State previously filed a probation violation stemming from the same incident and same conduct.

2. The juvenile court erred in entering an Order of Adjudication and Disposition against A.B. for possession of marijuana.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

1. Under RCW 13.40.070(3) the State is required to elect between filing an information and modifying community supervision when those actions are based on the same conduct. Here, the State sought modification of A.B.'s previous disposition because A.B. violated the condition of his community supervision that he attend school regularly after he was suspended from school because of possession of marijuana, where the State also filed an information charging A.B. with possession of marijuana under age 21. Did the juvenile court erroneously deny A.B.'s motion to dismiss the marijuana charge when the probation violation, for which he received punishment, stemmed from the same conduct that resulted in the criminal charge? Assignments of Error 1 and 2.

C. STATEMENT OF THE CASE

A.B. appeals from his adjudication for possession of marijuana at Sequim High School on October 8, 2015. Before A.B.'s stipulated facts

hearing for the offense on May 12, 2015, his community supervision and disposition for a prior juvenile adjudication for possession of marijuana were modified based on a probation violation for possession of marijuana on October 8, 2015. A.B. argues that under RCW 13.40.070(3), the State could not file both a petition to modify his community supervision and an information charging him with a crime based on the same conduct.

1. **Original juvenile disposition order, cause no. 15-8-00012-2**

A.B. entered a plea to unlawful possession of marijuana under age 21 in the Juvenile Division of the Clallam County Superior Court in Cause No. 15-8-00012-2 on April 16, 2015, and an order of disposition was entered the same day. Clerk's Papers (CP) 38, 43-51 (Response to Motion to Dismiss, March 28, 2016, and attached Order on Adjudication and Disposition) (Appendix A). Among the conditions of the supervision contained in the Order on Adjudication is the requirement that A.B. attend school without unexcused absences, tardiness or disciplinary referrals. CP 47. App. A at 5. (Order on Adjudication, Section 4.13 B, at p. 5). In Sections 4.13 A and N of the Order on Adjudication, A.B. was also ordered to refrain from committing new offenses and refrain from using illegal drugs and alcohol. CP 48. App. A at pp. 5 and 6.

2. **Probation violation filed October 8, 2015**

A.B. was suspended from Sequim High School for five days on October 8, 2015. On October 8, 2015 the Sequim School District filed a Notice of Disciplinary Action in Cause No. 15-8-00012-2. CP 38, 55. App. B. The Notice of Disciplinary Action stated that the basis for the suspension is:

“The reason for this action is the following alleged misconduct: [A.] was in possession of marijuana, a vaporizer and vapes.”

CP 55. App. B.

The school suspension began October 9, 2015 and was for a period of twenty days; but could be reduced to five days if A.B. obtained a drug and alcohol assessment and followed the recommendation of the assessment. CP 68.

A.B.’s school suspension began October 9, 2015. CP 55. A.B.’s juvenile probation counselor (JPC) filed a violation report to the court on the same day, stating that:

“[A.] was suspended from school and might be able to return after 5 days (see attached). [A.] was court ordered to complete Drug and Alcohol treatment and isn’t finished yet due to a relapse he had over the summer.”

CP 54. Appendix C. The School District Notice of Disciplinary Action for Student Long Term Suspension was attached to the Violation Report.

The Clallam County Prosecutor’s Office filed a Petition for Order Modifying Sentence on October 9, 2015 in cause no. 15-8-00012-2, alleging

that A.B. violated the condition of his disposition order, referring to the Notice of Violation filed by his JPC on October 9, 2015. CP 52. App. D. The JPC recommended that the court impose ten days in detention and recommended that the court extend A.B.'s probation to complete drug and alcohol treatment. CP 54. App. C.

At a probation violation hearing on October 15, 2015, A.B. admitted the violation and the juvenile court imposed four days with credit of one day served in detention, extended his probation until January 15, 2016. CP 38-39. The court entered an Order Modifying Community Supervision on October 15, 2015, finding that A.B.'s admitted the violation and imposed four days in detention and an extension of probation to January 15, 2016, and that A.B. obtain a substance abuse evaluation and follow all Chemical Dependency Disposition Alternative treatment recommendations. CP 57-58. App. E.

3. Current adjudication, cause no. 15-8-00112-9

On October 26, 2015, the Clallam County Prosecutor's Office received a law enforcement Referral Sheet¹ originating from the same allegation that A.B. possessed marijuana at school on October 8, 2015, which resulted in his suspension. CP 38 (Response to Motion to Dismiss, at 1, 2).

The State filed an information on November 4, 2015, charging A.B. possession of marijuana under age 21 in cause no. 15-8-00112-9. CP 77; RCW 69.50.4013(2); RCW 69.50.4014; RCW 69.40.204(c)(22). The information stemmed from the same incident that resulted in A.B.'s suspension and probation violation. CP 39, 77.

A.B. moved to dismiss the charge based on RCW 13.40.070(3), which requires the State to choose between modifying community supervision or filing a criminal charge based on the same conduct. CP 60-72, 76. A.B. argued that RCW 13.40.070(3) permitted the State to file either a probation violation or an information charging a crime for a given infraction, but not both. CP 31, 60.

The matter came on for hearing on March 31, 2016, before the Honorable Christopher Melly. Report of Proceedings² (RP) (3/31/16) at 2-11. The State argued the probation violation was based on A.B.'s suspension from school, while the criminal charge was based on possession of marijuana, the underlying event that resulted in his suspension from school. RP (3/31/16) at 3-4. After hearing argument, the court took the matter under

¹CP 59.

²The record of proceedings consists of the following sequentially paginated hearing dates: RP—November 5, 2015; December 17, 2015; February 18, 2016; February 25, 2016; March 3, 2016; March 31, 2016; April 28, 2016, and May 12, 2016.

advisement. RP (3/31/16) at 10.

The court filed a Memorandum Opinion on April 6, 2016 denying the defense motion to dismiss and found that the State was not precluded from filing the information charging A.B. with possession of marijuana. CP 20.

App. F. The Decision provides in relevant part:

The Order on Adjudication imposed as a condition of sentence the requirement that the Respondent have no disciplinary referrals. It is beyond objection that a suspension from school is a disciplinary action. The school district could impose that action for a multitude of student behaviors, including possession of marijuana on school grounds. But the Court does not believe that it is in the province to look behind the school district's action.

...

Where a defendant's acts supports charges under two criminal statutes, a Court weighing a double jeopardy challenge must determine whether, in light of legislative intent, the charged crimes constitute the same offense. To determine if a defendant has been punished multiple times for the same offense, the "same evidence" test has been applied. Under this test, two convictions constitute different offenses for purposes of double jeopardy if each conviction includes elements not included in the other, or requires proof of a fact the other does not. *State v. Villanueva-Gonzales*, 175 Wn.App. 1, 5, 304 P.3d 906 (2013).

By establishing the school's suspension, the State proved elements not required for the possession [of marijuana] under 21 charged here. And by establishing the elements of both age and possession here, the State gains no advantage in establishing the school suspension which must be proven independently. Both the probation violation and new charge rely on different allegations and different elements and both can proceed without offending RCW 13.40.070(3).

CP 23-25. App. F.

The case came on for stipulated facts trial on May 12, 2016. RP (5/12/16) at 2-8. After reading the probable cause statement and police report, the court found A.B. committed the offense of possession of marijuana while under the age of 21. RP (5/12/16) at 3-4; CP 18. The court imposed standard range sanctions of six months of community supervision and 16 hours of community restitution. An Order on Adjudication and Disposition was entered May 12, 2016. CP 6-14.

Timely notice of appeal was filed on May 12, 2016. CP 17. This appeal follows.

D. ARGUMENT

1. THE STATE WAS PROHIBITED UNDER RCW 13.40.070(3) FROM CHARGING A.B. WITH POSSESSION OF MARIJUANA AFTER MOVING TO MODIFY A.B.'S COMMUNITY SUPERVISION FOLLOWING SUSPENSION FROM SCHOOL BASED ON THE SAME CONDUCT

A.B.'s adjudication of guilt for possession of marijuana must be reversed because the State already moved to modify his community supervision based on his possession of marijuana at his school. The trial court erred in denying the motion; dismissal is required because the modification motion and the marijuana charge relied on the same underlying conduct of possession of marijuana at his school.

At issue is whether RCW 13.40.070(3) prohibits the State from filing both a motion to modify a juvenile's community supervision and a criminal charge based on the same criminal offense.

RCW 13.40.070(3) provides that upon determining jurisdiction and probable cause, "the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (7) of this section. . . . *In lieu of filing an information or diverting an offense* a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision." (emphasis added). App. G.

Issues of statutory construction are reviewed de novo. *Welch v. Southland Corp.*, 134 Wn.2d 629, 632, 952 P.2d 162 (1998). This Court has previously held that it assumes that the Legislature meant what it said in the plain language of the statute. *Geschwind v. Flanagan*, 121 Wn.2d 833, 841, 854 P.2d 1061 (1993). If the statutory language is unambiguous, it is not subject to judicial construction. *State v. Howell*, 119 Wn.2d 513, 518, 833 P.2d 1385 (1992). "The purpose of statutory construction is 'to give content and force to the language used by the Legislature.' " *State v. Murrin*, 85 Wn.App. 754, 757–58, 934 P.2d 728 (1997) (quoting *State v. Wilson*, 125 Wn.2d 212, 216, 883 P.2d 320 (1994)).

a. The State is prohibited from charging A.B. with possession of

marijuana because it relied on the underlying conduct in its motion to modify his community supervision.

In this case, the State has chosen to file the criminal charge in the face of settled law prohibiting the filing of an information on the same conduct as the probation violation. In *Murrin*, 85 Wn.App. at 759-60, Division One held the plain language of RCW 13.40.070(3) to mean that if the State elects to file a probation modification "in lieu" of a criminal charge, then it cannot also file a criminal charge based on the same conduct. *Murrin*, 85 Wn.App. at 756.

In that case, Murrin was placed on community supervision for taking a motor vehicle without permission. Murrin violated his community supervision, and his probation officer filed a notice of modification which alleged the following violations: failure to perform community service, failure to pay restitution, curfew violation, and new offenses taking another motor vehicle and possessing burglary tools. *Murrin*, 85 Wn.App. at 756. The trial court modified Murrin's disposition and ordered him to spend 15 days in detention. *Murrin*, 85 Wn.App. at 757. Subsequently, the State charged Murrin with taking a motor vehicle without permission for the same incident that resulted in the violation. *Murrin*, 85 Wn.App. at 757. The trial court dismissed the information, ruling that the State could not both seek modification of community supervision and file an information based on the same conduct.

Murrin, 85 Wn.App. at 757. On appeal, Division One affirmed the trial court's dismissal and held:

The final sentence of subsection (3) grants the prosecutor discretionary relief from the preceding mandate, and allows the alternative of filing a motion to modify community supervision where the alleged offender is subject to such supervision and the new offense constitutes a violation of the terms thereof. This alternative is introduced by the phrase, "[i]n lieu of filing an information or diverting an offense."

To read the phrase "in lieu of" as permitting the State to both modify community supervision and file an information based on the same conduct is a "strained consequence" that should be avoided. Plain language does not require construction.

We hold that because the Legislature used the words "in lieu of", and the ordinary meaning of these words is "instead of", the State is prohibited from both seeking modification of community supervision and filing an information based on the same conduct.

Murrin, 85 Wn.App. at 758–59 (footnotes omitted).

The Court concluding by holding "the express language of RCW 13.40.070(3) mandates the State to elect between filing an information and modifying community supervision when basing such State action *on the same conduct*." *Murrin*, 85 Wn. App. at 760 (emphasis added).

It is noteworthy that the Court chose to use the term "conduct" as the final word in its Opinion, rather than the statutory term "offense," signaling that the statute should apply when the modification motion relies on the same conduct as the information, not only when the modification motion specifically relies on a criminal offense.

Six years later, this Court explicitly adopted the holding in *Murrin* in *State v. Tran*, 117 Wn.App. 126, 69 P.3d 884 (2003). Tran, who was fourteen years old at the time, was stopped for speeding. He told the police that he did not have a license and he "was brought home on January 24, 2002 by the Clark County Sheriff's Office for driving without a license." *Id.* at 129, n.1. Tran was still on community supervision for his previous juvenile offenses. Tran's sister informed his probation officer that the Clark County Sheriff's Office had brought Tran home for driving without a license. Tran's probation counselor filed a motion for an arrest warrant for Tran and for a hearing to modify Tran's disposition order, listing four probation violations, which included: (a) violation of a federal, state or local law and being in the company of a person known to be violating the law; (b) that Tran was brought home on January 24, 2002 by the Clark County Sheriff's Office for driving without a license; (c) that Tran was picked up by the Beaverton, Oregon Police Department for curfew violation on or around January 24, 2002; (d) unexcused absences from Heritage High School; and (e) that Tran failed to return home on January 24, 2002. *Tran*, 117 Wn.App. at 129 n.1. Tran admitted the violations, including violation "(b)." The court ordered him to serve 30 days in detention. *Tran*, 117 Wn.App. at 130.

The State also filed an information charging Tran with driving without a license in violation of RCW 46.20.005. Tran moved to dismiss under RCW

13.40.070, arguing that the State could not file both a motion to modify community supervision and an information charging him with a crime based on the same unlicensed driving incident. *Tran*, 117 Wn. App. at 130.

The State argued the modification did not rely on the criminal offense because when it alleged Tran was brought home for driving without a license, the allegation referred to a violation of Tran's house rules because he was out at night past curfew, contrary to his community supervision conditions., rather than violation of a criminal offense. *Id.* at 129, n.2.

The trial court denied Tran's motion to dismiss, ruling that the probation violation “(b)” focused on Tran's sister's statement to the probation officer that Tran was “brought home”; and although the “violation (b)” includes “information” about Tran's having driven without a license, it did not contain sufficient elements to support a criminal charge. *Tran*, 117 Wn.App. at 130. The trial court found that because the elements of driving without a license were not specified in the affidavit supporting the probation violation, the affidavit did not charge Tran with an offense. *Id.* at 131.

On appeal, this Court adopted the holding in *Murrin*, *supra*, and by implication ratified the meaning of “conduct” to fall within the plain meaning of the term “offense,” following the broadening of the statutory term “offense” to include the conduct underlying an alleged offense in *Murrin*. *Tran*, 117

Wn.App. at 134.

A plain reading of RCW 13.40.070(3) shows that the State may move to modify community supervision "in lieu of" filing an information for an offense, but it may not do both. See e.g., *Tran*, 117 Wn. App. at 134; *Murrin*, 85 Wn. App. at 760. See also, *Geschwind*, 121 Wn.2d at 841.

Here, A.B. was on community supervision and then was found to have brought marijuana and a vaporizer smoking device to school, and was subsequently suspended. The reason A.B. did not attend school was because he was suspended as a direct result of possession of marijuana. At the modification hearing, A.B. was given an additional four days in detention and therefore punished for the offense underlying the violation, CP 58. He was also ordered to obtain a substance abuse evaluation and follow the treatment requirements, CP 58.

Following the modification hearing, the State also elected to charge A.B. with possession of marijuana. Because the State chose to seek modification of A.B.'s prior disposition, it could not subsequently file a charge for possession of marijuana based on the same underlying conduct. *Murrin*, 85 Wn.App. at 759; *Tran*, 117 Wn.App. at 134.

The trial court's belief stated in its Memorandum Opinion that it cannot look "behind the school district's action" is misplaced, CP 23. Unlike *Tran*,

who had a plethora of alleged violations, there is no mistaking what conduct lead to A.B.'s suspension from school. In *Tran*, the juvenile had a variety of potential violations that could have led to school suspension. *Tran*, 117 Wn.App. at 129, n. 1. In A.B.'s case, however, the sole allegation leading to the suspension is that he possessed marijuana. Therefore, the suspension could not have been based on any other offense or conduct—the possession of marijuana is *a priori* the conduct that resulted in the school suspension. In other words, but for the marijuana, there would have been no basis for a probation violation.

b. Prohibiting the State from charging A.B. with possession of marijuana follows the legislative intent of RCW13.40.070.

Statutes must be interpreted in accordance with the intent of the Legislature. *Purse Seine Vessel Owners Ass'n v. Moos*, 88 Wn.2d 799, 567 P.2d 205 (1977). Statutes should be construed to effect the legislative purpose and to avoid unlikely, strained or absurd results. *State v. L.W.*, 101 Wn.App. 595, 602, 6 P.3d 596 (2000).

In enacting the Juvenile Justice Act of 1977 (JJA), the Legislature sought to hold juveniles accountable for their crimes and to deal with juvenile offenders in a consistent manner, while preserving the rehabilitative goals of the juvenile justice system. When solving a dispute that rests on the JJA's legislative intent, the reviewing court must ensure that the decision “effectuates to the fullest

possible extent” the dual purposes of the JJA. *State v. L.W.* 101 Wn.App. 595, 6 P.3d 596 2003 (quoting *State v. Rice*, 98 Wn.2d 384, 394, 655 P.2d 1145 (1982)). “The policies [of the JJA] are twofold: to establish a system of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders; and to hold juveniles accountable for their offenses.” *State v. Schaaf*, 109 Wn.2d 1, 743 P.2d 240 (1987), (citing *State v. Rice*, 98 Wn.2d at 392).

The purposes of the JJA are explicitly set forth in RCW 13.40.010(2) as follows:

It is the intent of the legislature that a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders ... be established ... [and] that youth, in turn, be held accountable for their offenses and that communities, families, and the juvenile courts carry out their functions consistent with this intent.

Other “equally important purposes” of the JJA include:

- (a) Protect[ing] the citizenry from criminal behavior;
- ...
- (c) Mak[ing] the juvenile offender accountable for his or her criminal behavior;
- (d) Provid[ing] for punishment commensurate with age, crime, and criminal history of the juvenile offender;
- ...
- (f) Provide for the rehabilitation and reintegration of juvenile offenders;
- (g) Provide necessary treatment, supervision, and custody for juvenile offenders; [and]

(h) Provid[ing] for handling of juvenile offenders by communities whenever consistent with public safety; ...

RCW 13.40.010(2).

Under the dual purposes juvenile statutory scheme, the juvenile justice system imposes lesser penalties than the adult criminal system which has a “punitive purpose and much more serious penalties.” *State v. J.H.*, 96 Wn.App. 167, 172, 978 P.2d 1121 (1999). “The penalty, rather than the criminal act committed, is the factor that distinguishes the juvenile code from the adult criminal justice system.” *State v. Schaaf*, 109 Wash.2d 1, 7–8, 743 P.2d 240 (1987).

The difference in policy and procedure is largely because the primary responsibility of the juvenile justice system is to respond to the needs of juvenile offenders, and because of the age and vulnerability of juvenile offenders. *State v. Kuhlman*, 135 Wn.App. 527, 531, 144 P.3d 1214 (2006) (citing *Schaaf*, 109 Wn.2d at 22).

Here, the legislative intent supports the holding that “conduct” is the underlying unit to consider in RCW 13.40.070(3), as this Court has previously found in *Tran*.

The sanction that A.B. received for the probation violation provided the degree of correction, accountability, punishment, and treatment the Legislature

intended in RCW 13.40.010(2) by imposition of the probation violation in lieu of a criminal adjudication. The probation violation subjected A.B. to accountability and punishment by receiving four days of detention, and treatment by ordering a drug evaluation and compliance with treatment recommendations. CP 58. No further rehabilitative affect could be achieved by filing the criminal information. Accordingly, the legislative intent of punishment, accountability, and treatment is fulfilled by prohibiting the filing of a subsequent criminal charge for the same conduct that resulted in the probation violation.

Permitting the State to split the conduct of possession of marijuana into different actions by engaging in a semantic argument that A.B.'s suspension was due to anything other than his possession of marijuana at the school in order to penalize A.B. twice for his conduct thwarts the Legislature's intent by essentially subjecting A.B. to the adult sentencing penalty, a result not intended by the Legislature.

Last, the trial court's analysis of the statute under double jeopardy in its Memorandum Opinion is misplaced. In terms of adult sentences under the SRA, double jeopardy is generally not implicated where the State prosecutes a defendant for an action constituting a new offense that also serves as the basis for the enforcement of the previous sentence. See *United States v. Soto-Olivas*,

44 F.3d 788, 789 (9th Cir.), cert. denied, 515 U.S. 1127, 115 S.Ct. 2289, 132 L.Ed.2d 290 (1995) (double jeopardy not implicated where defendant's action served both as basis for probation revocation and for new offense.) Unlike juveniles, adults sentenced under the SRA are subject to both modification of supervision conditions and criminal charges based on the same conduct. RCW 9.94A.6333.

The language of RCW 13.40.070(3) is plain. The Legislature's mandate that juvenile offenders not be penalized twice for community supervision violations, with both modification of supervision and criminal charges based on the same conduct, is part of the goals of leniency and rehabilitation that characterize the JJA in contrast to the SRA. The State may move to modify community supervision "in lieu of" filing an information for an offense. RCW 13.40.070(3). It may not, however, do both and therefore the adjudication for possession of marijuana must be reversed. *Tran*, 117 Wn. App. at 134; *Murrin*, 85 Wn. App. at 760.

//

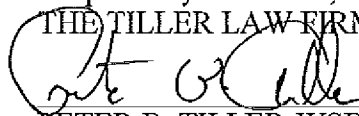
//

E. CONCLUSION

For the foregoing reasons, A.B. respectfully requests this Court reverse his adjudication of guilt and order of disposition for possession of marijuana and remand with instructions to dismiss.

DATED: November 16, 2016.

Respectfully submitted,
THE TILLER LAW FIRM



PETER B. TILLER-WSBA 20835

ptiller@tillerlaw.com

Of Attorneys for A.B.

CERTIFICATE OF SERVICE

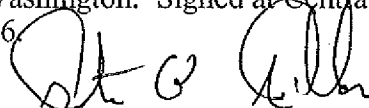
The undersigned certifies that on November 16, 2016, that this Appellant's Corrected Opening Brief was sent by the JIS link to Mr. David Ponzoha, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste.300, Tacoma, WA 98402-4454, and copies were mailed by U.S. mail, postage prepaid, to the following:

Mr. Jesse Espinoza
Deputy Prosecuting Attorney
223 E 4th St. Ste 11
Port Angeles, WA 98362-3000

Mr. David Ponzoha
Clerk of the Court
Court of Appeals
950 Broadway, Ste.300
Tacoma, WA 98402-4454

Mr. A.B.
4109 Palo Alto Rd.
Sequim, WA 98382

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on November 16, 2016.



PETER B. TILLER

APPENDIX A



Record Certification: I Certify that the electronic copy is a correct copy of the original, on the date filed in this office, and was taken under the Clerk's direction and control. 9
Clallam County Clerk, by [Signature] Deputy #pages: 9

FILED
CLALLAM CO. CLERK

2015 APR 16 A 10:49

BARBARA CHRISTENSEN

Goodrich
14R023027
773306

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM
JUVENILE COURT

STATE OF WASHINGTON v.

NO: 15-8-00012-2

ORDER ON ADJUDICATION AND
DISPOSITION
(ORD)

Anthony Brestoff
Respondent(s)
D.O.B.: 10/7/98

☒ Clerk's Action Required. Paragraphs 4.1, 4.6, 4.11, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21

I. HEARING

1.1 Respondent appeared for a disposition hearing on 4-16-15 (Date).

1.2 Persons appearing were:

☒ Respondent
☒ Pros. Atty. T. Lassus
☐ Prob. Counsel.
☒ Resp. Atty. S. Hayden

☒ Parent Father
☐ Parent
☐ Other

4.9 The court heard evidence and argument, reviewed the files, and now enters the following:

II. FINDINGS OF FACT

Respondent ☒ pled guilty to; revoked deferred disposition; was found guilty at adjudicatory hearing.

Count	Charge	Juv. Class	RCW & Type of Offense	Offense Date
<u>1</u>	<u>PMJ 440g m 42140 E</u>	<u>E</u>	<u>69.50.4014; 4013(2); MIS</u>	<u>6-11-14</u>
			<u>204(c)(22)</u>	

☐ The state failed to prove the following offense(s) and Count(s)

COPIES DATE 4/16/15

PA. PD. PO(2) ☒ SGL ☒

CLK ☒ TS ☒ CDDA ☒ DOL ☒

- ☐ For the offense charged in count(s) _____, domestic violence was pled and proved, RCW 10.99.020.
- ☐ **SAME COURSE OF CONDUCT.** The conduct in Count(s) _____ is the same course of conduct. The conduct in Count(s) _____ is not the same course of conduct.
- ☐ Respondent waived the right to ☐ counsel, ☐ arraignment on amended information, and/or ☐ speedy disposition.
- ☒ Respondent's offender score is 0, which is based upon his/her criminal history.
- ☐ The court considered the respondent's eligibility for the chemical dependency disposition alternative.
- ☐ _____ Respondent has declined to enter a Diversion Agreement. _____ Respondent failed to complete a Diversion Agreement.
- ☐ Respondent may be ordered to pay restitution pertaining to matters not here adjudicated, and/or Count(s) _____, notwithstanding dismissal, because respondent, with counsel, so agreed and stipulated.
- ☐ A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).
- ☐ **The following mitigating factors exist in this case:**
- ☐ The respondent's conduct neither caused nor threatened serious bodily injury, or the respondent did not contemplate that his/her conduct would cause or threaten serious bodily injury;
 - ☐ The respondent acted under strong and immediate provocation;
 - ☐ The respondent was suffering from a mental or physical condition that significantly reduced his/her culpability for the offense through failing to establish a defense;
 - ☐ Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and
 - ☐ There has been at least one year between the respondent's current offense and any prior criminal offense.
 - ☐ Other: _____
- ☐ **The following aggravating factors exist in this case:**
- ☐ In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;
 - ☐ The offense was committed in an especially heinous, cruel, or depraved manner;
 - ☐ The victim was particularly vulnerable;
 - ☐ The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;
 - ☐ The current offense included a finding of sexual motivation pursuant to RCW 13.40.135;
 - ☐ The respondent was the leader of a criminal enterprise involving several persons;
 - ☐ There are other complaints which have resulted in diversion or a finding or plea of guilty which are not included as criminal history; and
 - ☐ The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.
 - ☐ Other: _____
- ☐ The respondent committed a felony firearm offense as defined in RCW 9.41.010. After considering the statutory factors, the court decided the respondent ☐ should ☐ should not register as a felony firearm offender.

This case was transferred from exclusive adult court jurisdiction by:

- ☐ Agreement
- ☐ Reduced Charge
- ☐ Jury Verdict
- ☐ Other: _____

III. CONCLUSIONS OF LAW

- ☒ Respondent is guilty of the offense(s) as stated in the findings.
- ☐ Respondent is not guilty of the offense(s) as stated in the findings.
- ☐ A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).
- ☐ Respondent is eligible for the chemical dependency disposition alternative on Count _____. A standard disposition for that Count would constitute a manifest injustice.

IV. ORDER

IT IS HEREBY ORDERED that:

- 4.1 ☐ The state's motion ☐ respondent's motion to dismiss Count(s) _____ is granted, and said Count(s) are hereby dismissed.

RANGE of DISPOSITION:

- 4.2 ☒ Count II: Disposition will be within the standard range.
- 4.3 ☐ Count _____: Disposition within the standard range for this offense would effectuate a manifest injustice
- 4.4 ☐ Count _____: Disposition shall be within the Special Sex Offender Disposition Alternative. (SSODA)
- ☐ Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total of _____ weeks. Disposition is suspended. If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition.
- 4.5 ☐ Count _____: Chemical Dependency Disposition Alternative (CDDA)(RCW 13.40.165)
- ☐ Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total of _____ weeks. Disposition is suspended. If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition.
- 4.6 ☐ Option B Suspended Disposition Alternative (RCW 13.40.0357). (For offenses committed on or after July 27, 2003.)
- ☐ Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total of _____ weeks. Disposition is suspended. If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition.

4.7 ☐ Mental Health Disposition Alternative (RCW 13.40.167). (For offenses committed on or after July 27, 2003.)

☐ Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total of _____ weeks. Disposition is suspended and the offender is required to participate in the recommended treatment interventions. If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

4.8 COMMUNITY SUPERVISION:

Count I 16 months

Count II _____ months

Count III 1 months

Concurrent 1 or Consecutive _____ with any existing probation

4.9 CONFINEMENT:

Count I _____ days _____ credit for time served.

Count II _____ days _____ credit for time served.

Count III _____ days _____ credit for time served.

Detention staff is authorized to deliver and observe the respondent self-administer any prescription medication or any over-the-counter medication which has been authorized by a parent, guardian, detention staff, or medical personnel.

 Yes No Temporary releases from confinement for school, work, medical appointments, etc., are authorized at the discretion of the probation counselor.

4.10 COMMUNITY RESTITUTION (SERVICE) WORK

Count I 16 hours, credit for _____ hours for time served of _____ days

Count II _____ hours, credit for _____ hours for time served of _____ days

Count III _____ hours, credit for _____ hours for time served of _____ days

16 total hours of community service ordered to be completed at a rate set by probation officer.

4.11 DISPOSITION: COMMITMENT to the custody of the Department of Social and Health Services, Juvenile Rehabilitation Administration for institutional placement.

Count I _____ minimum weeks to _____ maximum weeks. _____ credit for days served.

Count II _____ minimum weeks to _____ maximum weeks. _____ credit for days served.

Count III _____ minimum weeks to _____ maximum weeks. _____ credit for days served.

_____ Respondent shall be held in the detention facility pending transportation.

The Court orders the minimum term of commitment to be set at:

_____ The lowest possible term per RCW 13.40.030(2) (50% if maximum is 90 days or less, 75% if maximum is greater than 90 days but less than one year; 80% if the maximum term is more than one year)

_____ Maximum term

Other

4.12 **STATUTORY FIREARMS ENHANCEMENTS:**

- ☐ **Unlawful Possession of a Firearm in the 2nd Degree Under 18:** The court finds that respondent possessed a firearm in violation of RCW 9A.040 (2)(a)(iv). The mandatory minimum disposition is 10 days confinement. If the total period of confinement ordered exceeds 30 days, respondent is committed to the custody of JRA to serve the confinement.
- ☐ **Unlawful Possession of a Firearm in the 1st or 2nd Degree:** Respondent has been Adjudicated for Unlawful Possession of a Firearm in the 1st or 2nd Degree. Under RCW 13.90.193(2), respondent must participate in one or more qualifying programs of Aggression Replacement Training (ART), Functional Family Therapy (FFT), and/or any other evidence based, research based, and cost beneficial program as directed by his or her supervising probation counselor. If a juvenile court risk assessment later determines participation in such programs would not be appropriate, the supervising probation counselor shall ask the court to decide whether or not respondent should continue participating in the programs.
- ☐ **Armed with a Firearm:** The court finds that respondent or an accomplice was armed with a firearm while committing a felony, and thus hereby imposes:
- ☐ 6 months (Class A felony) ☐ 4 months (Class B felony) ☐ 2 months (Class C felony) confinement in addition to any other sentence imposed herein and respondent is committed to the custody of JRA to serve said confinement.

4.13 **CONDITIONS OF SUPERVISION:**

- A. The respondent is ordered to refrain from committing new offenses.
- * B. Respondent is further ordered to comply with the **MANDATORY SCHOOL ATTENDANCE** * provisions of RCW 28A.225, and to inform respondent's school of the existence of this requirement. Respondent is to attend school without unexcused absences, tardiness or disciplinary referrals. Respondent is required to have full cooperation and participation in the classroom and maintain grades to the best of his/her ability.
- C. Respondent shall report regularly, and on time, to the assigned probation counselor (or probation counselor's designee), as the probation counselor shall schedule or direct.
- D. Respondent shall keep probation counselor informed of respondent's current address and telephone number and shall notify probation counselor before moving to a different address.
- E. Respondent shall attend information classes and/or other educational programs, as directed by probation counselor.
- F. Respondent shall follow all reasonable rules of the home, placement or juvenile detention.
- G. Respondent shall notify their probation counselor when leaving Clallam County.
- H. Respondent shall contact their probation counselor within 48 hours of signing disposition form to schedule an intake appointment.
- (Items I through U apply only if the box is checked)
- I. ☒ **CURFEW** to be set at the discretion of the probation counselor.
- J. ☐ Respondent shall **NOT USE OR POSSESS FIREARMS, AMMUNITION OR OTHER DANGEROUS WEAPONS** during this period of community supervision. Probation counselor is authorized to search respondent and items carried or controlled by respondent at scheduled appointments and other reasonable times, and may specify in writing further details of this prohibition.
- K. ☒ Respondent shall participate in **CLASSES AS RECOMMENDED BY PROBATION INTAKE** including: counseling, outpatient substance abuse treatment programs, ~~outpatient~~

mental health programs, sex offender, ART, civic responsibility and/or anger management classes, as probation officer directs. Respondent shall cooperate fully.

- L. ☒ Respondent shall be **EVALUATED FOR ALCOHOL OR OTHER DRUG DEPENDENCY** and if qualified, shall comply with all recommendations consistent with CDDA treatment requirements.
- M. ☒ Shall not congregate in areas where controlled substances are being used or underage drinking is taking place.
- N. ☒ Respondent shall refrain from using illegal drugs and alcohol and is subject to **RANDOM URINALYSIS/PBT/BAC** as directed by the probation counselor or commissioned law enforcement officer to insure compliance with the court's orders.
- O. ☐ Respondent is ordered not to go upon the following premises or geographic areas: _____
- P. ☐ Respondent shall not contact, except through counsel or a probation counselor, the following person(s): _____
- Q. ☒ Respondent shall reside in a placement approved by the supervising probation counselor or approved by court order.
- R. ☐ Respondent shall not knowingly associate with any person, adult or juvenile, who is under the supervision of any court of this or any other state for any juvenile offense or crime.
- S. ☐ Respondent shall obtain a mental health evaluation and shall comply with treatment recommendations unless otherwise ordered by the court.
- T. ☐ The respondent shall attend all mental health appointments and take medications as prescribed.
- U. ☐ Respondent shall participate in Victim Offender Mediation, if victim is agreeable.
- V. ☐ Other conditions: _____

The Department of Social and Health Services may consent to necessary medical, surgical, dental or psychiatric care for respondent, including immunization required for public school students.

4.14 Respondent is ordered to pay:

- ☐ A FINE of \$100 for crimes designated domestic violence under RCW 10.99.020 (Pursuant to Chapter 15, Laws 2004) - Effective June 10, 2004.
- ☒ Victims' Compensation Fund statutory ASSESSMENT: ☒ \$400 ☒ \$75
- ☒ Pursuant to RCW 43.43.690 Washington crime laboratory fees: ☒ \$200 ☐ Waived.
- ☐ Pursuant to RCW 43.43.7541 and 43.43.754, Mandatory DNA Fee: \$100
- ☐ Pursuant to RCW 9.68A.105 or 9A.88.120 fee of \$ _____ ☐ Waived.
- ☐ Restitution in the total sum of \$ _____ for victim(s): _____
- ☐ Restitution is joint and several with co respondents: _____
- ☐ A restitution hearing is set for _____
- ☐ Juvenile Rehabilitation Administration is ordered to provide transportation of respondent to and from the above-ordered restitution hearing.
- ☐ The respondent waives his/her right to be present at the restitution hearing.
- ☒ Total Legal Financial Obligations are \$ 300.275 to be paid at a rate of \$ 50 beginning in the month of may 2015

Payments can be mailed to Clallam County Superior Court at 223 E 4th Street, Port Angeles, WA 98362.

****IT IS BEST TO HAVE YOUR LEGAL FINANCIAL OBLIGATIONS FULFILLED PRIOR TO ENTRY OF A JUDGMENT. JUDGMENTS WILL BEAR INTEREST UNTIL PAID IN FULL.**

Respondent shall remain under the Court's jurisdiction for a maximum term of ten (10) years after respondent's 18th birthday (unless extended for an additional ten years) for the collection of ordered restitution and penalty assessment, unless these amounts have been converted to a civil judgment pursuant to RCW 9.94A.145 and/or RCW 13.40.192 and/or 13.40.198. While under the court's jurisdiction, the court may modify the amount, terms, and conditions of the restitution. The court's jurisdiction over the collection of the restitution will terminate if the court grants the respondent's petition to seal the records of this case. RCW 13.40.190.

The financial obligations imposed in a judgment shall bear interest from the date of judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. The court ☐ waives ☐ imposes clerk's trust account fees and interest on other financial obligations imposed in this judgment.

Jurisdiction over Respondent is automatically extended beyond the child's eighteenth birthday because the provisions of this sentence, and/or other outstanding dispositional requirements, cause the Court reasonable concern that Respondent may not complete this sentence before reaching age eighteen. (RCW 13.40.300)

- 4.15 ☐ **HIV TESTING.** The Department of Health or designee shall test and counsel the respondent for HIV as soon as possible and the respondent shall fully cooperate in the testing. RCW 70.24.340.
- 4.16 ☐ **DNA TESTING.** The respondent shall have a biological sample collected for purposes of DNA identification analysis and the respondent shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the respondent's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the respondent for a qualifying offense. RCW 43.43.754.
- 4.17 ☐ **JURISDICTION IS HEREBY TRANSFERRED TO** _____
County for supervision of this order. IT IS FURTHER ORDERED that the clerk of this court shall transfer the file in this matter to the clerk of _____ County Superior Court. The respondent address is: _____
- 4.18 ☒ **DRIVER'S LICENSE REVOCATION:** The court finds that Count _____ is ☐ a felony in the commission of which a motor vehicle was used; or ☐ the unlawful possession of a firearm in a motor vehicle; or ☐ unlawful possess of a firearm 2nd; or ☒ *PMJ < 2/1/0*. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.265, RCW 9.41.040(5), RCW 46.20.285, RCW 13.40.265.
- 4.19 ☐ **FELONY FIREARM PROHIBITION:** As a result of the adjudication of guilt as to a felony or one or more of the following crimes committed by one family household member against another: Fourth Degree Assault, Coercion, Stalking, Reckless Endangerment, Criminal Trespass in the First Degree, Violation of the provisions of a Protection Order or No Contact Order restraining the person or excluding the person from a residence, respondent shall not use or possess a firearm, and under federal law any firearm or ammunition, until his or her right to do so is restored by the court in which the respondent was adjudicated or the superior court in Washington State where the respondent lives, and by a federal court if required. The

court clerk is directed immediately forward a copy of the respondent's driver's license or Identicaid, or comparable information, along with date of conviction, to the Department of Licensing. RCW 9A.1.047

- 4.20 ☐ **OFFENDER REGISTRATION:** Because this crime involves a sex offense, or a kidnapping offense involving a minor as defined in RCW 9A.44.128 the respondent must register. The specific registration requirements are set forth in the "Offender Registration" Attachment.
- 4.21 ☐ **Felony Firearm Offender Registration:** The respondent must register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" Attachment.
- 4.22 ☐ **Bail:** Bail in the amount of \$_____ is ☐ exonerated ☐ forfeited.
- 4.23 ☒ **Administrative Sealing Required:** The Respondent is eligible for administrative sealing of the court records in this case because the offense(s) is not a "Most Serious Offense" (as defined in RCW 9A.4A.030), a "Sex Offense" (as defined in RCW 9.44), or a felony drug offense under RCW 69.50 (except Possession of a Controlled Substance and/or Forged Prescription). An administrative sealing hearing must be set for the next administrative sealing hearing after the latest of either the respondent's 18th birthday, the anticipated end of community supervision, or if JRA is imposed, the anticipated end of the commitment and any anticipated parole.

Hearing is set for: 10-13-2016

ARB
The respondent is not required to appear at the administrative sealing hearing. At the administrative sealing hearing, the juvenile court will seal the case unless the court finds: (1) the respondent failed to comply with the terms of disposition; or (2) there is an objection to the sealing or a compelling reason not to seal. If there is an objection or compelling reason, the court will set a contested hearing. The respondent and counsel will be given at least 18 days notice of the hearing. At the contested hearing, the court decides whether or not to seal the court record.

- 4.24 ☒ **Administrative Hearing to Convert Legal Financial Obligations to a Judgment:** This hearing will be set at the first juvenile court calendar after Respondent's 18th Birthday. If there is any outstanding legal financial obligations owing on the case it will be converted to a judgment. Respondent waives his/her presence at this hearing.

ARB
Hearing is set for: 10-13-2016

Dated: 16 April 2015

Christopher Kelly
Judge/Commissioner

Presented by:

Tracey L. Lassus
TRACEY L. LASSUS, WSBA #31315
DEPUTY PROSECUTING ATTORNEY

Copy Received; Approved for Entry; Notice of
Presentation Waived:

P. Hayden
Type or Print Name/Bak Number 25138
ATTORNEY FOR RESPONDENT

ADMINISTRATIVE MEMORANDUM

Does conviction require license or permit markup?

☐ Yes ☐ No

License or permit marked in manner authorized by
Department of License?

☐ Yes ☐ No

RCW 46.20.270

J. Anthony R. Buntoff
RESPONDENT

4109 Palo Alto Rd
Dep. 98382

RESPONDENT RESIDENTIAL ADDRESS

RESPONDENT MAILING ADDRESS (IF
DIFFERENT THEN RESIDENTIAL ADDRESS)

818-335-3883
RESPONDENT TELEPHONE NUMBER

dad work - 3606834534

Collateral Attack on Judgment. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.

APPENDIX B

**SEQUIM SCHOOL DISTRICT
NOTICE OF DISCIPLINARY ACTION FOR STUDENT
LONG-TERM SUSPENSION**

To the Parent or Guardian of: Anthony Brestoff

Date: October 8, 2015

1. **NOTICE:** This is to inform you that in accordance with District Policy/Procedure No. 3241 and WAC 392-400-260, I am placing the above-named student on a long-term suspension, for a period of 20 days, which involves a removal of the student from all classes and activities.

2. **REASON FOR THE ACTION:** The reason for this action is the following alleged misconduct:

Anthony was in possession of marijuana, a vaporizer and vapes.

3. **RULE(S) VIOLATED:** The following District Rule(s) are alleged to have been violated:

3241 P Exceptional Unsafe Misconduct #20 Alcoholic Beverages and Drugs. This is the second occurrence of this nature during Anthony's high school career.

4. **TIME AND TERM OF SUSPENSION:**

This 20 day suspension will begin on October 9, 2015 and your student may return to school/class on November 9, 2015. A student on out of school suspension is not allowed on any Sequim School District property or at any Sequim School District sponsored event or activity.

Failure to comply with this regulation will result in further disciplinary action.

The suspension will be reduced to 5 days if Anthony obtains a drug and alcohol assessment and follows the conditions and recommendations of that assessment. He could return to school October 19, 2015.

5. **HEARING PROCESS:** If a hearing is desired to determine whether the disciplinary action is supported by the evidence, a hearing must be requested. See Section 7 below. Written request for a hearing must be received by the third school business day after receipt of notice. School business days are Monday through Friday. For your information the "school business days" applicable to the right to a hearing in this case are the following: October 9, 12 and 13, 2015. Upon request, the student shall continue to receive school work and credit for work completed during the appeal process.

6. **PURPOSE OF REQUESTED HEARING:** The purpose of the hearing is to determine whether the disciplinary action is supported by the evidence.

7. **HOW TO REQUEST A HEARING:** In order to request a hearing, the parent or the student must write to the hearing authority, within the time limitations specified above, at: Sequim School District, 503 N. Sequim Ave., Sequim, WA 98382, Attention: Hearing Officer and request a hearing. The writing should state whether the parents or the student plan to have legal counsel present at the hearing. The hearing will take place within three school days after receipt of the request. If a hearing is requested, the student will have the right to remain in school until the hearing officer's decision. If a hearing is not requested within the time limits specified above, the District will consider that the hearing rights have been waived. In that case, the long-term suspension will begin.

8. PREHEARING AND HEARING PROCESS: The parent and the student have the right to: (a) inspect in advance of the hearing any documentary or other physical evidence the District intends to use at the hearing; (b) be represented by counsel; (c) question and confront witnesses; (d) present an explanation of the alleged misconduct; and (e) present witnesses and/or evidence. The District has a right to inspect in advance any documentary or other physical evidence the parent/guardian or the student plan to use at the hearing. A tape recorded or verbatim record of the hearing shall be made. A written set of findings and conclusions, along with the duration of the long-term suspension or other lesser form of punishment, shall be provided to the student's legal counsel, or if none, to the student and his or her parent(s) or guardian(s).

Notice must be mailed by certified mail or must be personally delivered. If notice is personally delivered, parent/guardian and student must sign the acknowledgement of receipt below.

ACKNOWLEDGMENT OF RECEIPT OF NOTICE

TO STUDENT:

Signature of Student

Date

Delivered in
person

Sent Certified
Mail

Phone
Communication

TO PARENT:

TO: Signature: _____ Date: _____
BY: Signature: _____ Date: _____

TO: _____ Date: _____
BY: Signature: _____ Date: _____

TO: _____ Date: _____
BY: Signature: _____ Date: _____

Special Education Student YES Case manager: Mr. Isenberg

For a special education student, the Multidisciplinary Team (MDT) and parent(s)/guardian(s) will meet within 10 school days of the suspension date above to conduct a manifestation determination and to meet the requirements related to that determination.

NOTE: THE INFORMATION CONTAINED IN THIS NOTICE OF DISCIPLINARY ACTION IS A BRIEF SYNOPSIS OF DUE PROCESS RIGHTS. SCHOOL DISTRICT POLICIES AND PROCEDURES INCLUDE DUE PROCESS RIGHTS REGARDING NOTICES OF DISCIPLINARY ACTION AND HEARING PROCEDURES AVAILABLE. THESE DOCUMENTS CAN BE REVIEWED BY MAKING A REQUEST TO THE SCHOOL PRINCIPAL.

Sequim High School 601 N. Sequim Ave. Sequim, WA 98382 360 582 3600	Sequim Community School 220 W. Alder St. Sequim, WA 98382 360 582 3400	Sequim Middle School 301 W. Hendrickson Rd. Sequim, WA 98382 360 582 3500	Helen Haller Elem. 350 W. Fir St. Sequim, WA 98382 360 582 3200	Graywolf Elem. 171 Carlsborg Rd. Sequim, WA 98382 360 582 3300
--	---	--	--	---

cc: School
Student
Parent
Superintendent

APPENDIX C

CLALLAM COUNTY DEPARTMENT OF JUVENILE SERVICES
VIOLATION REPORT

☒ Probation Violation ☐ Addendum ☐ Amendment ☐ Warrant ☐ Deferred

TO: The Honorable: Judge/Court Commissioner

DATE: 10/9/15

RE:	Anthony Brestoff	CAUSE NO.:	15-8-00012-2
OFFENSE:	PMI<40grms<21 yrs old		
DATE OF DISPOSITION:	4/16/15		
SENTENCE:	6 months of Community Supervision		
TERMINATION:	10/15/15		
ADDRESS:	4109 Palo Alto Rd. Sequim, Wash. 98382		

NOTICE OF VIOLATION/ARREST

The above named offender has violated conditions of supervision by:

Failure to attend school without unexcused absences or disciplinary referrals.

SUPPORTING EVIDENCE:

Anthony was suspended from school and might be able to return after 5 days, (see attached). Anthony was court ordered to complete Drug and Alcohol treatment and isn't finished yet due to a relapse he had over the summer.

RECOMMENDATIONS:

10 days in detention to be served now and be released on the 18th the day before he is eligible to go back to school. Extend Probation until January 15th so he can complete Drug and Alcohol treatment.

☐ Obtain evaluation for substance abuse and follow all treatment recommendations consistent with CDDA treatment requirements made in such evaluation (not an Option B sentence).

Submitted by:

Joleen D. Goodrich P.O. II
Joleen D. Goodrich Probation Officer II
Clallam County Juvenile & Family Services

FILED
CLALLAM CO CLERK
2015 OCT -9 A 9:00
BARBARA CHRISTENSEN



Record Certification: I Certify that the electronic copy is a correct copy of the original, on the date filed in this office, and was taken under the Clerk's direction and control.
Clallam County Clerk, by *[Signature]* Deputy # *3*

APPENDIX D



Record Certification: I Certify that the electronic copy is a correct copy of the original, on the date filed in this office, and was taken under the Clerk's direction and control.
 Clallam County Clerk, by [Signature] Deputy Registrar 2

FILED
 CLALLAM CO CLERK

2015 OCT -9 P 1:39

BARBARA CHRISTENSEN

**SUPERIOR COURT OF WASHINGTON
 COUNTY OF CLALLAM
 JUVENILE DIVISION**

STATE OF WASHINGTON vs.

NO: 15-8-00012-2

ANTHONY BRESTOFF,
 Respondent.
 D.O.B.: 10/07/1998

PETITION FOR ORDER
 MODIFYING SENTENCE,
 REVOKING SENTENCE,
 CONFINING RESPONDENT

The State of Washington, by Tracey Lassus, Deputy Prosecuting Attorney for Clallam County, petitions the Court for an order:

- ☐ Modifying sentence.
- ☐ Revoking the sexual offender alternative suspending sentence, and ordering execution of sentence.
- ☒ Confining the Respondent pursuant to RCW 9.94A.200 (2) (b).
- ☒ Requiring the Respondent to show cause why he/she should not be punished for noncompliance with sentence.

This motion is based on the following:

1. On the 16TH day of APRIL, 2015, the Respondent, **ANTHONY BRESTOFF**, pled guilty to the crime(s) of: **POSSESSION OF MARIJUANA UNDER 21 YEARS OF AGE.**

2. The respondent was sentenced on _____, to various requirements or conditions under: **COUNT I**

_____ SSODA
 _____ wks commitment to JRA suspended
 6 _____ months community supervision.
 16 _____ hours community service work.
 \$75 _____ crime victims compensation assessment.
 _____ days detention, credit _____ served
 \$200 _____ lab fee
 XX _____ CDDA Evaluation/Treatment
 XX _____ Other: DOL REVOCATION

3. The Respondent has violated or failed to comply with the requirements or conditions of sentence as set forth in:

- ☐ The attached affidavit.
- ☒ The Notice of Violation dated 10/09/2015, submitted to the Court by JOLEEN GOODRICH, Probation Counselor II, of Port Angeles, Washington, and attached hereto.

DATED this 9 day of October, 2015.

Tracey L Lassus
Tracey Lassus, Bar# 31315

APPENDIX E

FILED
CLALLAM CO CLERK

2015 OCT 15 A 10:32

BARBARA CHRISTENSEN

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM
JUVENILE DIVISION

STATE OF WASHINGTON,

Plaintiff,

vs.

Anthony Brastoff

DOB 10-7-98

Respondent.

NO. 15-8-00012-2

ORDER MODIFYING
COMMUNITY SUPERVISION
(ORMCS)

I. PETITION

- 1.1 A petition was filed by the Juvenile Probation Department alleging that the above-named child violated a condition of his/her community supervision, and requesting that such community supervision be modified.
- 1.2 After proper notice pursuant to JuCR 11.2, a hearing was held;
- 1.3 Those persons appearing and testifying are included in the clerk's minutes.

II. FINDINGS

- 2.1 Based upon the testimony heard and the case record to date/ ☒ Based upon the respondent's admission, the Court finds by a preponderance of the evidence that the child had violated the terms of community supervision.

1. ORDER MODIFYING COMMUNITY
SUPERVISION



Record Certification: I Certify that the electronic copy is a
correct copy of the original, on the date filed in this office,
and was taken under the Clerk's direction and control.
Clallam County Clerk by Deputy #pages: 2
CLALLAM COUNTY

PROSECUTING ATTORNEY
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, Washington 98362-3015
(360) 417-2301 FAX 417-2469

III. ORDER

IT IS HEREBY ORDERED that the child's community supervision is modified in the following manner:

5 days in detention 3 to be served now as scheduled 1 credit for time served

☒ Extend Probation to 1/15/2016

TU ☒ Obtain an evaluation for substance abuse and follow all recommendations consistence with CDDA

treatment requirements made therein.

☒ All other conditions of the disposition remains in full effect.

Other: Release on Sunday October 18, 2015
at 3pm

Detention staff are authorized to deliver, and observe the Respondent self-administer any prescription medication or any over the counter medications, which has been authorized by a parent, guardian, detention staff or medical personnel.

Dated this 15th day of October, 2015.

Christopher Kelly
Judge/Commissioner

Presented By:

MARK B. NICHOLS
Prosecuting Attorney

Tracey L. Lassus
Tracey L. Lassus, Deputy Prosecutor
WSBA# 31315

Anthony L. Bauloff
Signature of Respondent


Anthony L. Bauloff
Attorney for Respondent
WSBA# 25138

2 -

ORDER MODIFYING COMMUNITY
SUPERVISION

CLALLAM COUNTY
PROSECUTING ATTORNEY
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, Washington 98362-3015
(360) 417-2301 FAX 417-2469

APPENDIX F



2016 APR -6 P 1:40

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM
JUVENILE DIVISION

STATE OF WASHINGTON,

Plaintiff,

VS.

NO. 15-8-00112-9

ANTHONY R. BRESTOFF,
DOB: 10/07/1998

MEMORANDUM OPINION

Respondent.

STATEMENT OF FACTS

The Respondent, Anthony Brestoff, was adjudicated in violation of State drug possession laws in April 16, 2015. As part of his disposition, he was ordered, in part, to refrain from committing new offenses and, to attend school without unexcused absences, tardiness or disciplinary referrals. *Order on Adjudication and Disposition*, ¶4.13 A-B, cause number 15-8-00012-2.

On October 8, 2015, the Sequim School District suspended the Respondent for 20 days. The basis for the suspension was the Respondent's possession of marijuana, a vaporizer and vapes. The District issued a Notice of Disciplinary Action to student.

On October 9, 2015, a petition alleging probation violations was filed by the Respondent's probation officer. The basis of the violation was "failure to attend school without unexcused absences or disciplinary referrals." Violation report dated October

1
2
3
4
5 9, 2015. Supporting evidence included the school district's notice of Disciplinary
6 Action for Student.

7 On October 15, 2015, the Respondent appeared on the probation petition for his
8 first appearance. The Respondent indicated that he would admit the allegation. The
9 Court had the following colloquy with the Respondent.
10

11 "COURT: Anthony, I'm looking at a violation report dated October 9, 2015.
12 To the allegation that you failed to attend school without unexcused absences
13 disciplinary rules, do you admit or deny?

14 RESPONDENT: Umm, admit."
15

16 The Respondent's grandfather and, apparently his mother, injected themselves
17 into the discussion at this point and, while the volume at the defense table is soft, it
18 appears that defense counsel reiterates that the Respondent was admitting to suspension
19 from school. The reason for the suspension was not addressed by either the State or
20 defense and, when the grandfather wanted to discuss the reason therefore, the State
21 indicated that additional charges might be forthcoming and the Court terminated that
22 line of the grandfather's comments. The defense made no response. *Record of*
23 *Proceedings, October 15, 2015.* The Court accepted the Respondent's admission and
24 entered disposition.
25
26
27
28

1
2
3
4
5 On November 4, 2015, the State filed an information charging the Respondent
6 with Possession of Marijuana under 21 Years of Age in Cause No. 15-8-00112-9.
7

8
9 **DECISION**

10 The Respondent asserts that the information in this cause should be dismissed
11 because the marijuana issue was the subject of the probation violation addressed on
12 October 15, 2015.

13 RCW 13.40.070(3) provides, in pertinent part, that,

14 "In lieu of filing an information or diverting an offense a
15 prosecutor may file a motion to modify community
16 supervision where such offense constitutes a violation of
community supervision."
17

18 Cited case law makes it clear that this language requires the State to make an
19 election between a probation violation and filing a new charge for the same conduct.
20 *See, e.g., State v. Murrin*, 85 Wn. App. 754, 760, 934 P. 2d 728 (1997). The parties do
21 not appear to dispute the holdings of those cases that require the State to make an
22 election between a probation violation and new charge for the same criminal conduct.

23 Where the parties part company, however, is what conduct is the subject of the
24 probation violation and the new charge.
25

26 The defense believes that the possession of marijuana is at the heart of both the
27 probation violation and the new charge.
28

1
2
3
4
5 The State argues that the conduct at issue in each proceeding is different. In the
6 probation violation, the conduct is the Respondent's failure to attend school without
7 disciplinary referrals. In this case, the conduct is possession of marijuana.

8
9 Significantly, none of the fact patterns of any of the cited cases¹ involving
10 intervening action such as a suspension from school that is premised upon criminal
11 activity.

12 As the defense correctly notes, a school suspension could be premised upon a
13 variety of actions: swearing at teachers, insubordination, disruptive behavior,
14 possession of marijuana, etc.. Here, the defense would have the Court look behind the
15 school's disciplinary action to the Respondent's specific behavior resulting in the
16 suspension. The Court declines the invitation.

17
18 The Order on Adjudication imposed as a condition of sentence the requirement
19 that the Respondent have no disciplinary referrals. It is beyond objection that a
20 suspension from school is a disciplinary action. The school district could impose that
21 action for a multitude of student behaviors, including possessing marijuana on school
22 grounds. But the Court does not believe that it is its province to look behind the school
23 district's action.

24
25 The State was required to establish for a probation violation that the Respondent
26 was the subject of disciplinary action by the school. He was and it has. For the

27 ¹ In addition to *Murrin, State v. Zimmerman*, 130 Wn. App. 122, 121 P. 3d 762 (2005) and *State v. Tran*,
28 117 Wn. App. 126, 69 P. 3d 884 (2003).

1
2
3
4
5 marijuana charge in this cause, however, the State is required to prove that the
6 Respondent possessed marijuana and is under the age of 21. In short, each requires the
7 State to prove different elements.

8 Double jeopardy jurisprudence is instructive.

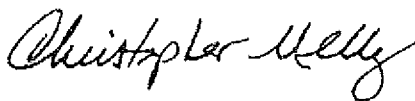
9
10 Double jeopardy principles protect the defendant from being convicted more
11 than once under the same statute if the defendant commits only one unit of the crime.
12 Where a defendant's act supports charges under two criminal statutes, a Court weighing
13 a double jeopardy challenge must determine whether, in light of legislative intent, the
14 charged crimes constitute the same offense. To determine if a defendant has been
15 punished multiple times for the same offense, the "same evidence" test has been
16 applied. Under this test, two convictions constitute different offenses for purposes of
17 double jeopardy if each conviction includes elements not included in the other, or
18 requires proof of a fact the other does not. *State v. Villanueva-Gonzales*, 175 Wn. App.
19 1, 5, 304 P. 3d 906 (2013).
20
21
22
23
24
25
26
27
28

1
2
3
4
5 By establishing the school's suspension, the State proved elements not required
6 for the possession under 21 charged here. And by establishing the elements of both age
7 and possession here, the State gains no advantage in establishing the school suspension
8 which must be proven independently. Both the probation violation and new charge rely
9 on different allegations and different elements and both can proceed without offending
10 RCW 13.40.070(3).
11

12
13 **CONCLUSION**

14 The Respondent's Motion to Dismiss is DENIED.
15

16 DATED this 6th day of April, 2016.
17

18 
19

20 CHRISTOPHER MELLY
21 JUDGE
22
23
24
25
26
27

APPENDIX G

RCW 13.40.070

Complaints—Screening—Filing information—Diversion—Modification of community supervision—Notice to parent or guardian—Probation counselor acting for prosecutor—Referral to mediation or reconciliation programs.

(1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

- (a) The alleged facts bring the case within the jurisdiction of the court; and
- (b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1)(a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (8) of this section. If the prosecutor finds that the requirements of subsection (1)(a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Except as provided in RCW 13.40.213 and subsection (7) of this section, where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

- (a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.411(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or * 9.41.040(2)(a)(iii); or
- (b) An alleged offender is accused of a felony and has a criminal history of any felony, or at least two gross misdemeanors, or at least two misdemeanors; or
- (c) An alleged offender has previously been committed to the department; or
- (d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or
- (e) An alleged offender has three or more diversion agreements on the alleged

offender's criminal history; or

(f) A special allegation has been filed that the offender or an accomplice was armed with a firearm when the offense was committed.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (8) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient to charge an alleged offender with either prostitution or prostitution loitering and the alleged offense is the offender's first prostitution or prostitution loitering offense, the prosecutor shall divert the case.

(8) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(9) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversion interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversion unit, the victim shall be notified of the referral and informed how to contact the unit.

(10) The responsibilities of the prosecutor under subsections (1) through (9) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

(11) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such mediation or victim offender reconciliation programs shall be voluntary for victims.

TILLER LAW OFFICE

November 16, 2016 - 4:44 PM

Transmittal Letter

Document Uploaded: 3-489481-Appellant's Brief.pdf

Case Name: State v. A.B.

Court of Appeals Case Number: 48948-1

Is this a Personal Restraint Petition? Yes ☐ No ☒

The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

☒ Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Kirstie Elder - Email: Kelder@tillerlaw.com